

DIRECTOR'S CORNER: WHAT'S THE PROBLEM?

The first article in this newsletter explores the impact of an issue not normally associated with conflict - organizational skills - on generating or impeding the resolution of disputes. It exemplifies the role that factors other than communication or problem-solving skills may have on a conflict. The second article goes in the opposite direction: it explores the benefits of applying a core conflict resolution skill - interest-based problem solving - to everyday challenges at work and at home.

The overall message is simple, but powerful: The range of options we perceive for resolving a conflict are dictated by the manner in which we define it. Expansive definitions open the door to creative solutions.

-Geoff Drucker, Director, Federal Dispute Resolution



RESOLVED TO GET ORGANIZED? WHAT ABOUT ORGANIZING TO RESOLVE?

By Dawn Martin

On average, people spend roughly 150 hours per year trying to find documents, electronic files, and other information. That's equivalent to almost a month of work. Some studies put the number even higher - 10% of work time. Think of the lost productivity, the aggravation, the resulting in-house discord and, just as importantly, the hours that could have been spent simply enjoying life.

Now consider how many workplace conflicts result from lack of communication or miscommunication, and how often these lapses occur because the parties were "just too busy" to communicate effectively. When we talk about enhancing people's capacity to prevent and resolve conflict, we need to include organizational skills in the conversation.

I learned as much as I could about organizing out of necessity, not curiosity. During a time of significant transition, my personal and professional organizational capacity dropped markedly. This, in turn,

decreased my productivity, making it even tougher to manage normal demands, not to mention the added ones brought on by change. So I started reading. Little by little, I began applying the principles that made sense to me. I found that, with better organizing systems and skills, I was able to regain my footing, get through the transition and sustain higher levels of productivity and enjoyment, long-term. If it worked for me, I figured it could work for my mediation clients, all of whom are in transition of one sort or another.

Mediators offer a structured process for addressing and resolving conflict. When they are at the table, we help parties organize their thoughts, priorities, and the topics of discussion and information related to each. But sometimes this isn't enough. To get to the table - literally - and come prepared and in the right frame of mind, parties may need help addressing organizational issues at work or at home.

As mediators, we work with people who are navigating change driven by conflict. They are drawn away from their normal

responsibilities to address a crisis. This takes extra time, energy and money and, barring some sort of miracle, nothing extra comes in. Take a couple facing separation. Their lives were complex before their relationship fell apart. Both work. The children have full schedules of their own. Someone has to manage the mail, the finances, house upkeep, the sports activities, etc. Add to this long list of routine demands the emotional, financial and time pressures of reconfiguring their lives and it is surprising that any of them show up for mediation sessions, period, much less make good use of the process.

Or take a dispute between two busy people who work in the same office. They face plenty of organizational challenges on good days. To participate effectively in the mediation process, they have to devote added time to preparation which is exacerbated if they can't find what they need.

Dispute resolution professionals spend a lot of time talking about how important it is for parties to learn how to think outside the box. That is the ultimate goal. But you

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can't get there without first having a box and knowing what's in it. So, for many clients, the starting point is getting organized enough to know what they are facing by doing a thorough reality check.

Some clients are able to express concerns about organizational challenges. In my family practice, it often surfaces as financial mismanagement or differences about organizing the children's lives. It can be helpful to let parties know that disorganization is a typical byproduct of being in transition, and then address the issue as just that, one of the issues. Directing parties to books, organizational tools and other resources also can be useful. As lives have become more complex, interest in organizing has grown dramatically, and there is an abundance of available information.

For those who demonstrate a chronic lack of organization, but don't raise it, it may be appro-

appropriate to identify the issue for them, most likely in a separate session. At a minimum, the impact of disorganization on the mediation process needs to be addressed. If one party regularly shows up without having found a certain document, despite earlier promises to do so, it not only slows the process and costs the parties more money, but can erode earlier progress.

In family mediation, I typically meet with clients in relatively short sessions spread out over a period of weeks or months. Thus, I can guide them into productive activities, such as getting more organized, in between sessions. Most federal mediations begin and end the same day, or the next day, leaving the mediator no time to help parties address needs away from the table. So dispute resolution professionals in federal agencies must take the lead in helping parties cope with the organizational challenges that both create conflict and are exacerbated by it.

Training on organizational topics, such as time, space and information, are best offered as a preventative measure. This is particularly valuable prior to large-scale transitions, as they are ripe for creating organizing challenges and fomenting conflict. When this is not possible, parties should receive one-on-one help in organizing their documents, information, and thoughts prior to trying to negotiate a resolution. It is those moments when we feel ourselves spinning out of control that we are most open to receiving guidance. This presents an opportunity for ADR specialists to help parties understand the value of organizing, not only for the negotiation process, but for their overall productivity and quality of life, as well.

Dawn Martin is a lawyer, mediator and an organizing consultant. In her organizing practice, she helps clients achieve their professional and personal goals by organizing time, space and information.

DON'T MISS AN OPPORTUNITY

While I was out walking my dog a few nights ago, a neighbor told me she was redoing her kitchen and asked whether I had any boxes she could use to store house wares during the renovation. I said I'd check but I didn't think we had any empty ones. We said good night and I walked away.

A minute later, a mental light bulb went on. I remembered having a large collection of suitcases that I have used for temporary storage on several occasions. I went back and offered them to my neighbor.

This was doing someone a small favor, not resolving a contentious conflict, but the thought process was the same. My neighbor requested a specific solution: boxes. As a result, I reflexively responded in her framework: "Sorry, no boxes." But when I thought about her underlying interest - temporary storage - I realized I could offer a solution, and a better one at that because suitcases have handles. It was simply a matter of thinking outside the box called "boxes."

Here is another simple illustration. I needed to cover up a large round hole in the ceiling where an old smoke alarm had been removed. My wife and I came up with two solutions: covering up the hole with a plate or using adhesives to reattach the old alarm (the hardware was gone). Two time-consuming trips to the hardware store came to naught because neither solution worked. Then I took a picture of the hole, showed it to the hardware store manager, and asked what the best way would be to cover up the hole. He handed me a drywall patch kit, which did the trick.

Neither my wife nor I obtained such a kit on our first two trips to the hardware store because we did not ask for one. Instead, we requested solutions developed from an admittedly very limited base of knowledge about home repairs. The third trip was a charm because I shared my interest, thereby opening the door for someone more expert to suggest the best solution.

What do these trivial anecdotes from everyday life have to do with conflict resolution? A whole lot, I think. Understanding the difference between a solution (also known as a "position") and an interest does not make anyone a better problem solver. What makes a difference is learning to apply theory to practice. This means training yourself to identify and articulate your own interests, and training yourself to listen for underlying interests when others speak. It also may mean helping others to identify and clarify their interests. The best way to acquire such training is to recognize that opportunities for interest-based problem solving abound in everyday life; you just have to be on the lookout for them.

Recently, in the mediation of a large class action, it appeared that payment to the class representatives was going to be one of the most contentious issues. Generally, representatives demand guaranteed payments that far exceed what other class members can recover. The defendant faces a dilemma. Refusing to compensate the representatives for their initiative and effort can squander a deal. But class members often rail against such payments and urge the judge to disapprove the settlement because the representatives were "bought off."

Quality, Results, Value.

A different type of solution emerged from listening carefully to the representatives discuss their interests. What they really wanted, more than a guaranteed pot of money, was the chance to prove they had been wronged - if not in court, then in arbitration. In exchange for the opportunity to recover full damages if they proved liability, the representatives were willing to accept the risk of recovering nothing. Equally confident it would prevail in arbitration, the defendant readily assented.

By agreeing to arbitrate two claims, the parties overcame the final stumbling block to adopting a framework for resolving thousands of other claims with

out litigation. The key was taking a step back and looking at interests rather than presuming that the typical solution (a fixed payment) was right or best.

Conflict is woven into the fabric of life, so conflict resolution skills are life skills. The more you practice interest-based problem solving in everyday work and home life, the better prepared you will be to creatively resolve major conflicts, such as a multi-million dollar class action. And the more you practice resolving serious conflicts through interest-based problem solving, the better equipped you will be to find creative solutions to daily challenges.

— *Geoff Drucker*

The Federal Practice Group Welcomes Cecilia Sparks Ford and Susan Levin

Reengineering How Disputes Are Resolved

Drawing on her experience as Chair of the Departmental Appeals Board at the United States Department of Health and Human Services, Ms. Sparks Ford will focus on assisting federal adjudication agencies with reengineering, process improvement and strategic planning. She will also provide neutral services directly through The McCammon Group and through the American Health Lawyers Association's roster of mediators/arbitrators.

Ms. Sparks Ford was appointed a Member of the Board in 1980 and was Chair from 1999 to 2006. The Administrative Conference of the United States called the Board a model for administrative dispute resolution. Ms. Sparks Ford is an experienced senior executive who as DAB Chair was the HHS Dispute Resolution Specialist under the Administrative Dispute Resolution Act and managed the HHS Office of the Secretary's mediation and hearings and appeals processes under more than 60 different statutory and regulatory authorities.

As Chair, she used strategic planning and ongoing process improvements to dramatically increase case dispositions. In her more than 25 years as an administrative judge, she adjudicated hundreds of complex and high dollar (many over eight figures) disputes over Medicare/Medicaid funding and HHS program participation involving states, Head Start and other grantees, and nursing homes and other providers of medical care and services. Precedent setting cases she presided on included those involving fraud and abuse sanctions, allegations of scientific misconduct, and program terminations. These cases addressed matters such as the authority for federal action and applicable evidentiary standards.

Building on Strengths

Ms. Levin brings a wealth of experience facilitating and mediating with federal agencies including the Department of Agriculture, the Agency for International Development, the Postal Service, the National Institutes of Health, the National Archives and Records Administration, and the Department of the Interior. She has also worked with a wide variety of domestic and international clients such as the Milwaukee Police Department, Chemonics International, the Virginia Supreme Court, the National Multicultural Institute, the United Nations, and the World Bank.

Ms. Levin uses an appreciative approach to help clients develop best practices for achieving their future vision. Focusing on a positive perspective, she facilitates sessions that bring out the existing strengths and experiences of employees. Participants share stories of success and consider how they can expand on those results. Ms. Levin has found that when people focus on success and what's working in an organization, they become energized, motivated and more confident. In mediation, Ms. Levin focuses on the future by creating an opportunity for parties to transform their relationship and the way they deal with conflict in the future.

Ms. Levin has a master's degree in international affairs from The George Washington University. She earned a bachelor's degree from the University of Florida focusing on agriculture and anthropology, after transferring from Tufts University.

Since 1995, The McCammon Group has mediated over 8,000 cases and has provided facilitation and training services to a broad array of government, corporate, and non-profit clients.

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